

Conducting a Disciplinary

Why Conduct a Disciplinary?

1. Behavioural

A Breach of Company Policy

2. Performance

A Failure to perform – Following receipt of the necessary support

Types of Disciplinary Breach

Misconduct

Minor breaches of policy

Serious Misconduct

Breach of Policy that is significant but doesn't warrant Dismissal / repeated Minor breaches

Gross Misconduct

Breach of policy that fundamentally damages the employment relationship

Principles of Natural Justice

- These are the base requirements to ensure a fair process:
 - An employee is made fully aware of any formal allegation made against them
 - They are afforded the opportunity to reply to any formal allegation made against them
 - They are afforded the right to representation throughout the disciplinary process
 - They receive the right to a full and objective investigation of the allegation
 - They receive the right of appeal

Addressing Issues - Informal

Counselling

This is an informal chat that attempts to correct the employees behaviour before it warrants formal intervention by management.

It is crucial that there is a follow up communication – email creates a good record – that is put on the employees file that outlines:

- Corrective Action
- Support – where required
- Repeat instances may result in formal review

Addressing Issues - Formal

Investigation

- Gather information about the complaint and ensure they have the opportunity to state their case
- Establish if there is an Allegation(s) to be reviewed at a Disciplinary
- Ensure that the employees Principles of Natural Justice are adhered to

Disciplinary

- Review the details of the Investigation with the employee and ensure they have another opportunity to state their case
- Establish if the Allegation(s) are to be upheld
- Identify a proportionate level of sanction

Appeal

- Review the details of the Disciplinary – as per the **specific point of appeal**
- Establish if the Disciplinary findings are accurate and / or if the level of sanction is proportionate
- Issue the company's final position on the matter before it is referred to third party - WRC (Normally) / High Court (Exceptional Circumstances - Dismissal)

Addressing Issues - Formal

Investigation

Process

1. Notify the employee of the situation and formally invite them to an Investigation Meeting
 - a) The invitation should be in writing. ISME provide a template for this
 - b) The employee should receive a minimum of 48 hours notice so they can prepare
 - c) The invitation should include a copy of the company Disciplinary Policy / Handbook.
2. At the investigation meeting question the individual to ascertain the facts of the matter. It is advisable to prepare the key questions in advance of the meeting.
3. Any statements of defence made by the employee should be investigated to confirm if they are accurate.
4. If the employee identifies witnesses, ensure that they are met with to verify statements. Witnesses should be employees as it is an internal process and not appropriate to involve people from outside the company. The employee might request to 'cross-examine' the statements of the witness. This should be facilitated.
5. Once all aspects of the Investigation have been confirmed, the Investigation Chairperson should advise the employee if the matter is progressing to a Disciplinary and what the allegations against them are. Under no circumstance should the Investigation outcome be provided on the same day as the Investigation meeting.
6. The employee should be notified in writing and be provided with a report that outlines the allegations against them. They should also be provided with copies of any information will be relied upon in the Disciplinary review.

Addressing Issues - Formal

Disciplinary

Process

1. Invite the employee to Disciplinary Meeting with a minimum of 48 hours notice. It is normal that the Disciplinary meetings details are incorporated into the Invitation Outcome
2. The invitation should include a copy of the company Disciplinary Policy / Handbook. It should not be assumed that the employee has received this.
3. Question the individual to ascertain the facts of the matter. It is advised to prepare the key questions in advance of the meeting.
4. Any statements of defence made by the employee should be investigated to confirm if they are accurate.
5. If the employee identifies witnesses, ensure that they are met with to verify statements. If they have been already met as part of the investigation, they should only be met again if there is an issue with the statement provided. The employee might request to 'cross-examine' the statements of the witness. This should be facilitated.
6. Once the Disciplinary review has concluded the Disciplinary Chairperson will need to decide whether or not the evidence available supports the allegations and whether they should be upheld or not. If the allegations are upheld, the level of sanction needs to be considered in line with the seriousness of the policy breach and it must be proportionate to the issue under review. Under no circumstance should the Disciplinary outcome be provided on the same day as the Disciplinary meeting.
7. The employee should be advised of their right to appeal and provided with the contact details of the relevant person

Addressing Issues - Formal

Appeal

Process

1. The employee needs to submit their appeal in line with the guidelines provided.
2. The appeal should outline the specific grounds for the appeal
3. The grounds for the appeal outlined by the employee are the focus of the appeal investigation
4. Invite the employee to Appeal with a minimum of 48 hours notice.
 - a) The invitation should be in writing. ISME provide a template for this
 - b) The employee should receive a minimum of 48 hours notice so they can prepare
 - c) The invitation should include a copy of the company Disciplinary Policy / Handbook.
5. The invitation should include a copy of the company Disciplinary Policy / Handbook. It should not be assumed that the employee has received this.
6. Question the individual to ascertain the facts of the matter. It is advised to prepare the key questions in advance of the meeting.
7. Any statements made by the employee should be investigated to confirm if they are accurate.
8. Once the Appeal review has concluded the Appeal Chairperson will need to decide whether or not the evidence available supports the employees position and whether the sanction should be overturned or not. If sanction is overturned, the Appeal Chairperson needs to decide if a different level of sanction needs to be issued or if it needs to be removed altogether. Again, the level of sanction needs to be considered in line with the seriousness of the policy breach and it must be proportionate to the issue under review. Under no circumstance should the Appeal outcome be provided on the same day as the Appeal meeting.

Who's who?

- The person conducting the Investigation / Disciplinary should not be a party in the issue under review
- They should be more senior than the person under investigation
- The matter should be escalated or move laterally to the next level of manager following the Investigation
- The appeal should be conducted by the most senior person in the operation – MD / GM / CEO
- All meetings should be carried out by different people
- Once an chairpersons role has been handed over, they should not be involved other than to formally confirm information, by request.